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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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CA

IN THE MATTER OF ILEC UNBUNDLING
OBLIGATIONS AS A RESULT OF THE FEDERAL
TRIENNIAL REVIEW ORDER

Docket No. T-00000A-03-0369

Pursuant to the June 24, 2003 Procedural Order in this Docket, Z-Tel Communications, Inc. ("Z-Tel") submits the following comments.

1. What issues pertaining to the 90-day proceeding will need to be addressed as a result of the FCC's Order? Please describe any issues identified in detail.

RESPONSE: The FCC Order sets forth the specific issues that may need be addressed in the 90-day proceeding in sufficient detail.

2. Please provide substantive comments on the presumptive finding of no impairment for local circuit switching on high-capacity loops such as DS-1 for business customers. These substantive comments should include any information that you believe rebuts the presumptive finding of no impairment for not providing local circuit switching as a UNE on high-capacity loops such as DS-1 for business customers.

RESPONSE: Z-Tel does not intend to initiate a 90-day proceeding. However, the Commission should not interpret the absence of a challenge to the FCC's presumption of non-impairment as validation of the FCC's analysis and the ability of a CLEC to demonstrate impairment in the future should not be viewed as waived.¹

¹ Qwest is still required to offer DS-1 level switching to serve all customers under Section 271 at just and reasonable rates determined, for intrastate use, by the Arizona Corporation Commission. FCC Order, ¶¶653-655.

- 1 3. If there are any other issues that the Commission must resolve within
2 the 90-day time frame, please provide substantive comment on those
3 issues as well.

4 **RESPONSE:** Z-Tel takes no position on this issue at this time.

- 5 4. For the 90-day proceeding, what process and schedule should the
6 Commission use to implement the FCC's Triennial Review Order, i.e.,
7 contested case process, comment and workshop process or merely a
8 paper comment process? If you believe that a contested case process is
9 necessary, please identify any disputed issues of material fact that
10 would need to be addressed in any evidentiary proceeding conducted by
11 the Commission. Are some issues more time sensitive than others?
12 Please identify any issues that are time sensitive and discuss your
13 responses in detail.

14 **RESPONSE:** Z-Tel takes no position on this issue at this time.

- 15 5. For the issues in the 90-day proceeding, please describe what you
16 believe is, or should be, the procedural relationship between the 90-day
17 proceeding involving the enterprise market and the nine month
18 proceeding for the "mass market".

19 **RESPONSE:** The FCC has delegated the state commissions differing roles in the mass
20 market versus transport and loop impairment analysis. In the "mass market
21 switching" setting, the FCC's Order directs state commissions to conduct a granular
22 analysis of certain specified triggers.² At the same time, the FCC made a clear
23 finding of "impairment" with regard to "mass market" switching. Thus, while the
24 Commission should initiate a proceeding to conduct this investigation, in that
25 proceeding, it would be reasonable to request that any incumbent that seeks to rebut
26 the national finding of "impairment" list the specific geographic areas (less than
27 statewide) that it believes the triggers or FCC conditions are met. Full discovery
28 should be permitted as to whether those geographic areas are the appropriate scope
29 of inquiry and such ILEC filings should not be regarded as any finding as to the
30 proper "geographic market" definition. But such initial statements could be useful to

² FCC Order, ¶¶ 486-524.

1 focus the 9-month switching inquiry to the areas subject to dispute between the
2 parties.

3 In the transport and loop review, the Commission is only required to conduct
4 a review of transport routes and customer loop locations for which some party has
5 presented evidence that the route or loop location satisfies the triggers established by
6 the FCC.³ As a result, the Commission need not initiate the 9-month inquiry unless
7 an ILEC submits an application designating specific transport routes or loop
8 locations it contends meets the triggers. Alternatively, if the Commission determines
9 it must initiate a proceeding, the incumbent LECs should be required to immediately
10 identify the transport routes and/or customer loop locations it contends satisfies the
11 FCC-established triggers.

12 Given the importance of the 9-month switching proceeding, it should be
13 initiated on October 2, 2003, the Effective Date of the FCC Order. That proceeding
14 should run parallel to any 90-day proceeding, while loop/transport issues would best
15 be addressed in a separate proceeding.

- 16 6. Are any rule changes required to the Arizona Administrative Code as a
17 result of the FCC's Triennial Review Order? For the issues in the 90-
18 day proceeding, are any rulemaking proceedings advisable as a result of
the FCC's Triennial Review Order?

19 **RESPONSE:** Z-Tel has not yet analyzed the Arizona Administrative Code to determine if
20 there are any rule changes required as a result of the FCC Order.

- 21 7. Please comment on any other issues related to the 90-day proceeding
22 you believe to be relevant to the ACC's implementation of the FCC's
Triennial Review Order.

23 **RESPONSE:** Z-Tel takes no position on this issue at this time. Z-Tel does note that in the
24 event the ACC declines to seek a waiver of the FCC DS1 "enterprise" switching
25 rule, the question of the rates, terms and conditions surrounding Qwest's
26

27 ³ FCC Order, ¶¶ 339, 417.

1 independent obligation to provide requesting carriers access to all types of switching
2 pursuant to section 271 "checklist" item 6 (47 U.S.C. 271(c)(2)(B)(vi)) may become
3 an immediate issue in Arizona (particularly for entrants currently purchasing
4 unbundled DS1 switching to serve Arizona customers). Z-Tel believes that dispute
5 over such access could arise pursuant to ILEC-CLEC interconnection agreements,
6 and the ACC has the authority, under federal law, to arbitrate "any" such open or
7 disputed issue, pursuant to section 252 of the Act.

- 8 8. Should the Commission address all of the issues relating to the 90-day
9 and 9 month proceedings within this docket?

10 **RESPONSE:** Both proceedings should commence on October 2, 2003, the effective date of
11 the FCC Order. The issues related to either the 90-day proceeding or the 9-month
12 switching proceeding can be address within this docket. However, the 9-month
13 switching proceeding should not be delayed until the completion of the 90-day
14 proceeding.

- 15 9. Should the Commission use the same process you identified in response
16 to Question No. 4 in both the 90-day and nine month proceedings?

17 **RESPONSE:** The FCC's Order emphasizes the importance of state commissions'
18 experience with finding facts based on evidentiary records.⁴ In delegating
19 impairment proceedings to the states, the FCC presumes that state commissions will
20 provide a forum where localized evidence will be reviewed carefully and tested by
21 cross-examination. Contested case procedures are vitally important in making the
22 granular determinations requested in the FCC's Order.

- 23 10. Please indicate in which of the proceedings you intend to actively
24 participate.

25
26
27 ⁴ FCC Order, ¶¶ 188 (generally), 328 (loop analysis), 417 (dedicated transport), 425 (mass
market switching analysis).

1 **RESPONSE:** To the extent any party initiates a 90-day proceeding, Z-Tel will monitor the
2 proceeding and may participate in the proceeding, depending on available resources.
3 Z-Tel intends to participate fully in any 9-month proceeding.

4
5 RESPECTFULLY SUBMITTED September 10, 2003.

6 **Z-TEL COMMUNICATIONS, INC.**

7
8 By



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